

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROSALIND HERBERT,

Plaintiff,

v.

5:11-CV-1107
(TWD)

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

PETER ANTONOWICZ, ESQ.
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OF COUNSEL:

KATRINA M. LEDERER, ESQ.
Special Assistant

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER

Presently before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner, pursuant to 42 U.S.C. §405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was conducted in connection with

¹ This matter has been treated in accordance with the procedures set forth in General Order No. 18 (formerly General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the federal Rules of Civil Procedure.

those motions on February 12, 2013 during a telephone conference at which a court reporter was present. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found the Commissioner's determination resulted from the application of proper legal principles and was supported by substantial evidence, and I provided further detail regarding my reasoning and addressing the specific issues raised by the Plaintiff in his appeal.

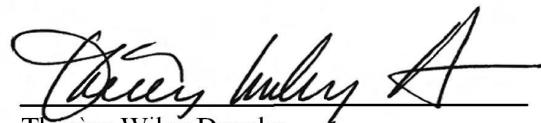
After due deliberation, and based up the Court's oral bench decision, which has been transcribed, is attached to this Order and is incorporated in its entirety by reference herein, it is hereby,

ORDERED, as follows:

- (1) Defendant's motion for judgment on the pleadings is **GRANTED**;
- (2) The Commissioner's determination that plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is **AFFIRMED**; and
- (3) The Clerk is directed to enter judgment, based upon this determination, dismissing Plaintiff's complaint in its entirety.

SO ORDERED.

Dated: February 19, 2013
Syracuse, New York



Therese Wiley Dancks
United States Magistrate Judge